STATE OF MICHIGAN

COURT OF APPEALS

POWELL PRODUCTION, INC., and POWELL LEASING COMPANY,

Plaintiffs-Appellants,

v

DONALD BUTCHER, DONALD CHISHOLM and LARRY FRENCH,

Defendants-Appellees.

UNPUBLISHED
March 13, 2003

No. 231626
Hillsdale Circuit Court
LC No. 00-000654-CZ

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court granting summary disposition on plaintiffs' complaint for fraud. We affirm.

This action has its roots in a claim filed by plaintiffs against Jackhill Oil Company and six of its directors, officers and employees, including the three defendants in the case at bar. That suit stemmed from an agreement between the parties regarding the development of certain oil wells and a determination when payout was to occur. In that litigation, plaintiffs maintained that a letter of intent dated June 2, 1983, existed that set forth the terms of the payout agreement. The defendants in *Powell v Jackhill* maintained that the letter of intent was unsigned and, therefore, was legally ineffective. Discovery did not yield any indication that defendants had acted wrongfully in their individual capacities and, as a result, they were ultimately dismissed from the original litigation after mediation resulted in a no-cause evaluation in favor of the individual defendants named in the present suit.

Plaintiffs were ultimately successful in their suit against Jackhill and obtained a judgment for $1.8 million. Several years later, Jackhill sued its attorneys for legal malpractice. During the course of that case, a fully executed letter of intent surfaced, which plaintiffs discovered in the summer of 1998. Plaintiffs then moved for discovery sanctions in the original litigation against both Jackhill and its attorneys. The circuit court awarded $48,177. That award was affirmed by this Court in *In re Costs & Attorney Fees*, 250 Mich App 89; 645 NW2d 697 (2002).

In June 2000, plaintiffs commenced the instant lawsuit, alleging that the individual defendants committed fraud on the court by authorizing or allowing the withholding of the letter of intent by Jackhill's attorneys. Defendants denied that they individually committed fraud on

the court and moved to dismiss the claims pursuant to MCR 2.116(C)(7) (barred by prior judgment) and MCR 2.116(C)(8) (failure to state a claim). The trial court granted summary disposition under (C)(7), stating that a new cause of action could not be maintained between plaintiffs and the individual defendants. The trial court stated that the proper remedy for plaintiffs would have been to file a motion for relief from judgment under MCR 2.612(C)(1)(c) as the case allegedly involved intrinsic fraud.

Whether an independent action for fraud exists arising out of the conduct of a party to a lawsuit was addressed by the Supreme Court in *Daoud v De Leau*, 455 Mich 181, 200; 565 NW2d 639 (1997):

> The principal teaching of *Triplett* [*v St Amour*, 444 Mich 170; 507 NW2d 194 (1993)] is that the court rules are a primary source for determining the means by which a person aggrieved by a judgment may seek to remedy the situation. The opinions of Justices Boyle and Riley are closely tied to the availability of relief under MCR 2.612(C). Justice Levin emphasizes another aspect of this point—the reluctance to fashion a new cause of action where the court rules already provide a framework for relief.
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> Indeed, one can paraphrase the last sentences of the opinions of Justice Boyle, 444 Mich 179, and of Justice Riley, 444 Mich 183, in this manner: Where statutes and court rules provide effective means for dealing with a judgment fraudulently obtained through perjury, it is neither sound law nor sound policy to permit a separate cause of action for fraud.

In the case at bar, plaintiffs did, in fact, seek and receive a remedy to the discovery fraud. The trial court awarded discovery sanctions of nearly $50,000, an award that this Court upheld on appeal. *In re Costs & Attorney Fees, supra.* Furthermore, plaintiffs do not argue that the trial court did not or could not have fashioned an adequate remedy through the use of discovery sanctions. Accordingly, we conclude that there existed an adequate remedy under the court rules and, consistent with the Supreme Court holdings in *Daoud* and *Triplett*, plaintiffs are precluded from bringing a separate action for fraud.

In light of this holding, we need not address the question whether the trial court's analysis of MCR 2.612(C) was correct.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Michael J. Talbot